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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/067,385 | 02/05/2002 | John E. Adamou | 469290-589 | 8182 |

7590 05/06/2003

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[REDACTED] EXAMINER

DEVI, SARVAMANGALA J N

[REDACTED] ART UNIT [REDACTED] PAPER NUMBER

1645

DATE MAILED: 05/06/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|--------------------------------------|--------------------------------------|
| Office Action Summary | Application No. 10/067,385 | Applicant(s) Adamou et al. |
| | Examiner S. Devi, Ph.D. | Art Unit 1645 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE one MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on Feb 5, 2002
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) _____ is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claims 1-17 are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner. If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
- 4) Interview Summary (PTO-413) Paper No(s). _____
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____

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Restriction

- 1) Claims 1-17 are under prosecution. Claim 16 involving administration of an antibody is not properly dependent from claim 15, because claim 15 is NOT drawn to an antibody. Claim 16 is currently not included in the restriction groups set forth below.
- 2) **Please Note:** In an effort to enhance communication with our customers and reduce processing time, Group 1640 is running a Fax Response Pilot for Written Restriction Requirements. A dedicated Fax machine is in place to receive your responses. The Fax number is 703-308-4315. A Fax cover sheet is attached to this Office Action for your convenience. We encourage your participation in this Pilot program. If you have any questions or suggestions please contact Paula Hutzell, Ph.D., Supervisory Patent Examiner at Paula.Hutzell@uspto.gov or 703-308-4310. Thank you in advance for allowing us to enhance our customer service. Please limit the use of this dedicated Fax number to responses to Written Restrictions.
- 3) Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-4 and 11, drawn to a polypeptide of SEQ ID NO: 8 and a vaccine, classified in class 514, subclass 2
 - II. Claims 5-10, drawn to an antibody to a polypeptide of SEQ ID NO: 8, classified class 530, subclass 387.9
 - III. Claims 12 and 13, drawn a method of preventing a streptoccal infection by administering a polypeptide of SEQ ID NO: 8, classified class 424, subclass 244.1
 - IV. Claims 15 and 17, drawn to a vaccine comprising a transformed microbial organism expressing Sp130, classified in class 424, subclass 93.4
- 4) Inventions I-IV are distinct from one another. Inventions I, II and I are directed to two distinct products: a microbial polypeptide, an antibody and a transformed microorganism, which differ from one another structurally, functionally and biologically or immunogenically.
- 5) Invention I and invention III are related as a product and a process of use of the product. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process of using the product as claimed can be practiced with another materially different product

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or (2) the product as claimed can be used in a materially different process of using that product (MPEP 806.05(h)). In the instant case, the product of invention I can be used in a materially different process, such as, a diagnostic assay method as a coating antigen.

Because these inventions are distinct for the reasons given and have acquired a separate status in the art as shown by their different classification/subclassification and divergent subject matter, restriction for examination purposes as indicated is proper.

6) Applicants are advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 C.F.R 1.143).

Applicants are reminded that upon cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 C.F.R 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filled petition under C.F.R 1.48(b) and by the fee required under 37 C.F.R 1.17(h).

7) Any inquiry concerning this communication or earlier communication(s) from the Examiner should be directed to S. Devi, Ph.D., whose telephone number is (703) 308-9347. A message may be left on the Examiner's voice mail service. The Examiner can normally be reached on Monday to Friday from 7.15 a.m to 4.15 p.m. except one day each bi-week which would be disclosed on the Examiner's voice mail system.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Lynette Smith, can be reached on (703) 308-3909.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

April, 2003

SD
S. DEVI, PH.D.
PRIMARY EXAMINER



RESTRICTION ELECTION FACSIMILE TRANSMISSION

DATE:

FROM/ATTORNEY:

FIRM:

PAGES, INCLUDING COVERSHEET:

PHONE NUMBER:

TO EXAMINER: S. DEVI, Ph.D.

ART UNIT: 1645

SERIAL NUMBER:

FAX/TELECOPIER NUMBER: (703) 308-4315

**PLEASE NOTE: THIS FACSIMILE NUMBER IS TO BE USED ONLY
FOR RESPONSES TO RESTRICTIONS.**

COMMENTS: _____

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TELEPHONE NUMBER LISTED ABOVE.

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